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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/589,796	10/05/2006	Lucas Alphonsus Maria Evers	903-197 PC'D/US	2394
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HOFFMANN & BARON, LLP 6900 JERICHO TURNPIKE SYOSSET, NY 11791				
EXAMINER				
ALEXANDER, REGINALD				
ART UNIT		PAPER NUMBER		
3742				
MAIL DATE		DELIVERY MODE		
12/04/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/589,796

**Applicant(s)**

EVERS ET AL.

**Examiner**

Reginald L. Alexander

**Art Unit**

3742

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 29 October 2009.  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 71-154 is/are pending in the application.  
4a) Of the above claim(s) 104-154 is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 71-77, 80-90 and 92-103 is/are rejected.  
7) ☒ Claim(s) 78, 79 and 91 is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 17 August 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All b) ☐ Some \* c) ☐ None of:  
1. ☒ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)  
3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 8/17/06, 10/7/08  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Election/Restrictions***

Applicant's election of claims 71-103 in the reply filed on 29 October 2009 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 71, 73-77, 81 and 103 are rejected under 35 U.S.C. 102(e) as being anticipated by Fischer.

There is disclosed in Fischer a beverage making device, comprising: a container 16 filled with a single portion of a substance, comprising a preformed deformable body defining a filling cavity which body has an opening (inherent) and an integral planar circumferential rim surrounding the opening, which opening is closed by a foil cover sheet (inherent) which is sealed to the circumferential rim, wherein the container is provided with identification means (para. 0039) corresponding to the substance contained in the container; a dispensing apparatus 1 comprising receiving means 3 for

receiving the container, which apparatus is adapted to open the container and comprises identification recognition means 55, 55a for automatically identifying the container and the substance therein, wherein the receiving means of the dispensing apparatus have a compression chamber 42 with a variable volume (volume capable of accepting different sized containers), a stop face 54 engaging the back side of the circumferential rim and a covering lid 13 with a supporting face 50 for engaging the cover sheet of the container, which covering lid is provided with a recess 36 arranged such that when the covering lid is closed it is positioned over a part of the sealed rim.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 71, 72, 75-77, 80, 82, 83, 85-90, 92-95 and 99-102 are rejected under 35 U.S.C. 103(a) as being unpatentable over Strenger '261 in view of Halliday.

There is disclosed in Strenger a beverage making apparatus, comprising a container 11 filled with a single portion of a substance, comprising a preformed deformable body (first plastic layer) defining a filling cavity which body has an opening (defined within a perimeter of the first sheet) and an integral planar circumferential rim 26, 28 surrounding the opening, which opening is closed by a cover sheet (second plastic layer) which is sealed to the circumferential rim by a sealing seam, the sealing seam including a weakened spot 25; and a dispensing apparatus 16 comprising

receiving means 30 for receiving the container, compression means for compressing the container body, the compression chamber provided with a piston 32 coupled to drive means 70, 71, 76, 78 adapted to engage the container, wherein the dispensing means includes treatment means 10, 101 for hot and cold water and means 126 for carbonated water, the carbonated water dispensing including a CO2 bottle 120 and valve 135.

Halliday discloses that it is known in the art to have, within a beverage making apparatus, a container including identification means corresponding to a substance contained within the container, and identification recognition means for automatically identifying the container and the substance therein.

It would have been obvious to one skilled in the art to provide the apparatus of Strenger with the container identification means and identification recognition means taught in Halliday, in order to identify a container and its substance to avoid production of an unwanted beverage.

Claims 71-76, 84 and 103 are rejected under 35 U.S.C. 103(a) as being unpatentable over McGill in view of Halliday.

There is disclose in McGill a dispensing apparatus, comprising: a container 50 filled with a single portion of a substance, comprising a preformed deformable body 52 defining a filling cavity which body has an opening and an integral planar circumferential rim 60 surrounding the opening, which opening is closed by a cover sheet 51 which is sealed to the circumferential rim, the cover including a weak spot 58; and a dispensing apparatus comprising receiving means 43 for receiving the container and manually operated compression means 32, 37.

Halliday discloses that it is known in the art to have, within a beverage making apparatus, a container including identification means corresponding to a substance contained within the container, and identification recognition means for automatically identifying the container and the substance therein.

It would have been obvious to one skilled in the art to provide the apparatus of McGill with the container identification means and identification recognition means taught in Halliday, in order to identify a container and its substance to avoid production of an unwanted product.

#### ***Allowable Subject Matter***

Claims 78, 79 and 91 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art reference of Boyd et al. is cited for its disclosure of an identification and recognition means for a container.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Reginald L. Alexander whose telephone number is 571-272-1395. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tu Hoang can be reached on 571-272-4780. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Reginald L. Alexander/  
Primary Examiner  
Art Unit 3742